

Ana Wayman-Trujillo, Recorder  
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YAVAPAI TITLE AGENCY INC ARES

B-4513 P-309  
06/07/2007 04:09P  
14.00 4144385

at the request of YAVAPAI TITLE AGENCY, INC.

when recorded mail to:

Investment Potential, L.L.C.

J B Jordan, Managing Member

316 S. Cortez Street

Prescott, AZ 86301



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Page: 1 of 2  
ARES 4144385

**CAPTION HEADING:**

**ADDENDUM #1  
to the  
Amended and Restated  
Declaration of Covenants,  
Conditions and Restrictions  
for  
PRESCOTT REGIONAL AIRPARK  
AND COMMERCE CENTER**

**Dated June 12, 2006, and recorded July 11, 2006 in Book 4414 of Official  
Records, Page 908, Yavapai County, Arizona**

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Page: 2 of 2  
ARES 4144386

## Addendum #1

### Amended and Restated Declaration of Covenants Conditions and Restrictions

For

### **PRESCOTT REGIONAL AIRPARK AND COMMERCE CENTER**

The fee for architectural review authorized under Article 3, paragraph 3.5 is set at \$750 (seven hundred and fifty dollars) effective June 7, 2007.

Under Article 4, paragraph 4.11, the restriction that no split shall result in a parcel of less than 3/4 acre in size, can be submitted to the Architectural Committee for a variance if the Owner of the parcel or parcels is planning a condominium project. The Architectural Committee's approval does not waive any restrictions applied by the City of Prescott in regards to zoning, setbacks, parking requirements or landscaping requirements. The condominium project must comply with the overall objectives and designs of the Airpark's stated goals.

Under Article 4, paragraph 4.9, it is stated that all storage yards must have block perimeter walls. The Architectural Committee may, at it's discretion, grant a variance if the topography and slope of an individual parcel impedes the Owner from complying with this requirement. Any variance will be considered on a case by case basis.

J. B. Jordan  
Investment Potential LLC  
Managing Member  
June 7, 2007

at the request of YAVAPAI TITLE AGENCY, INC.

when recorded mail to:

Joni Blyth

Yavapai Title Agency, Inc.

THIS IS A CONFORMED COPY OF INSTRUMENT

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2/11/06 @ 2:18 PM

IN BOOK

4414

OF OFFICIAL

RECORDS PAGE

908

**CAPTION HEADING: Amended and Restated Declaration of  
Covenants, Conditions and Restrictions for Prescott Regional Airpark  
and Commerce Center**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**FOR**

**PRESCOTT REGIONAL AIRPARK  
AND COMMERCE CENTER**

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### FOR

### PRESCOTT REGIONAL AIRPARK AND COMMERCE CENTER

This Declaration of Covenants, Conditions, and Restrictions for Prescott Regional Airpark and Commerce Center (this "Declaration") is made as of June 12, 2006, by INVESTMENT POTENTIAL, LLC, an Arizona limited liability company.

### INTRODUCTION

A. By that certain Declaration of Covenants, Conditions, Easements and Restrictions for Prescott Regional Airpark and Commerce Center, recorded May 24, 2006, in Book 4399, Page 334, in the official records of Yavapai County, Arizona, (the "Original Declaration"), declarant imposed certain conditions, covenants, restrictions and created other property and contract rights burdening and benefitting the real property described in the Declaration (the "Property").

B. Section 9.9 of the Original Declaration provides for the amendment of the Original Declaration by the Declarant.

C. The Declarant by executing this instrument has approved this Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for Prescott Regional Airpark and Commerce Center.

D. The Declarant desires that all of the Property subject hereto be held, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved or transferred in whole or in part, subject to this Amended and Restated Declaration, as amended or modified from time to time.

NOW THEREFORE, the Prior Declaration is hereby amended and revoked in its entirety and the provisions of this restated Declaration are hereby imposed upon the Property.

### ARTICLE 1. DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

**1.1 "Annual Assessment"** means the assessments levied against each Lot pursuant to Section 7.2 of this Declaration.

**1.2 "Architectural Committee"** means the committee of the Association to be created pursuant to Section 3.10 of this Declaration.

1.3 **"Areas of Association Responsibility"** means (i) all Common Area; (ii) all real property, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Association; (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof; (iv) all real property, and the Improvements situated thereon, designated on a Plat signed or ratified by the Association as an area to be maintained, repaired or replaced by the Association; and (v) all real property, and any Improvements situated thereon, within the Project which the Association has agreed in a Recorded document signed by the Association to maintain, repair or replace.

1.4 **"Articles"** means the Articles of Incorporation of the Association, as amended from time to time.

1.5 **"Assessable Property"** means any Lot, except such part or parts thereof as may from time to time be Exempt Property.

1.6 **"Assessment"** means an Annual Assessment, Special Assessment or Parcel Assessment.

1.7 **"Assessment Lien"** means the lien created and imposed by Article 7 of this Declaration.

1.8 **"Assessment Period"** means the period set forth in Section 7.6 of this Declaration.

1.9 **"Association"** means Prescott Regional Airpark and Commerce Center Owners Association, an Arizona nonprofit corporation, to be organized by Declarant to administer and enforce the Community Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

1.10 **"Association Rules"** means the rules adopted by the Board pursuant to Section 6.3 of this Declaration, as amended from time to time.

1.11 **"Board"** means the Board of Directors of the Association.

1.12 **"Bylaws"** means the Bylaws of the Association, as amended from time to time.

1.13 **"City"** means the City of Prescott, Arizona.

1.14 **"Common Area"** means all real property, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot which the Association may acquire through foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

**1.15 "Common Expenses"** means the actual or estimated expenses incurred, or anticipated to be incurred, by the Association, together with any allocations to reserves.

**1.16 "Community Documents"** means this Declaration, the Articles, the Bylaws, the Association Rules and the Design Guidelines.

**1.17 "Declarant"** means Investment Potential, L.L.C., an Arizona limited liability company, its successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

**1.18 "Declaration"** means this Declaration of Covenants, Conditions, and Restrictions, as amended from time to time.

**1.19 "Design Guidelines"** means the rules and guidelines adopted by the Architectural Committee pursuant to Section 3.10 of this Declaration, as amended or supplemented from time to time.

**1.20 "Exempt Property"** means (i) all real property and improvements owned by, or dedicated to and accepted by the United States, the State of Arizona, the County of Yavapai, Arizona, or any political subdivision thereof, so long as such entity or political subdivision is the owner thereof or for so long as said dedication remain effective; and (ii) all Common Area.

**1.21 "First Mortgage"** means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

**1.22 "First Mortgagee"** means the holder or beneficiary of any First Mortgage.

**1.23 "Improvement"** means: (i) any Unit, building, fence or wall; (ii) any road, driveway or parking area; (iv) any trees, plants, shrubs, grass or other landscaping improvements of any type and kind; (v) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, and (vi) any other structure of any type, kind or nature.

**1.24 "Lessee"** means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of a lease.

**1.25 "Lot"** means (i) a parcel of land within the Project (whether improved or unimproved) intended for independent ownership and use and designated as a Lot on a Plat and any building, structure or other Improvements situated thereon, or (ii) a Condominium Unit.

**1.26 "Maintenance"** means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvements, renovation, alteration, replacement and reconstruction.

**1.27 "Maintenance Standard"** means the standard of maintenance of Improvements on Lots and Parcels established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements situated on Lots and Parcels generally prevailing throughout the Project.

1.28 "**Member**" means any Person who is a Member of the Association.

1.29 "**Occupant**" means each Person other than an Owner who occupies or is in possession of a Lot, or any portion thereof or any building or any other structure situated thereon, whether as a Lessee or otherwise.

1.30 "**Owner**" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 *et. seq.* Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots subject to a Deed of Trust Recorded pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the Owner. In the case of the Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.31 "**Period of Declarant Control**" means the period commencing with the Recording of this Declaration and ending on the date the Class B membership in the Association terminates as provided in Section 6.8 of this Declaration.

1.32 "**Person**" means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.33 "**Plat**" means any plat, including a condominium plat, recorded against all or any part of the Project, and all amendments, supplements and corrections thereto.

1.34 "**Property**" or "**Project**" means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon, and all real property and all Improvements situated thereon which is annexed and subjected to this Declaration pursuant to Section 2.3 of this Declaration.

1.35 "**Purchaser**" means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for: (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Units or Lots; or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

1.36 "**Recording**" means placing an instrument of public record in the office of the County Recorder of Yavapai County, Arizona, and "**Recorded**" means having been so placed of public record.

1.37 **"Special Assessment"** means any assessment levied and assessed pursuant to Section 7.4 of this Declaration.

1.38 **"Visible From Neighboring Property"** means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of any adjoining Lot, Common Area or any public street within or adjacent to the Project.

## **ARTICLE 2.**

### **PROPERTY AND PERSONS BOUND BY DECLARATION**

2.1 **General Declaration.** Declarant is the owner of fee title to the Property, and Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement and desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property. Declarant hereby declares that all the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value and desirability of and which shall run with the Property. Declarant further declares that this Declaration shall be binding upon all Persons having any right, title or interest in the Property or any part thereof, their successors, successors in title and assigns and shall inure to the benefit of each Owner thereof. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenant and agree that the Lots and Parcels and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 **Disclaimer of Implied Covenants.** Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen representing the Declarant or any Developer shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration or any part of the Additional Property.

2.3 **Development Plan.** Notwithstanding any other provision of this Declaration to the contrary, the Declarant, with the approval of the City but without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to the Development Plan

with respect to any property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the property owned by the Declarant or changing the nature or extent of the uses to which the property may be devoted.

**2.7 Restriction on Liability of the Association and the Declarant.** Guardhouses or access gates on private streets may be constructed within certain areas of the Project in order to limit access. Each Owner and their tenants, guests and invitees, acknowledge that any such guardhouse or access gate may restrict or delay entry into, or access within, certain areas by police, fire department, ambulances and other emergency vehicles or personnel. Neither the Declarant, the Association nor any director, officer, agent or employee of the Declarant or the Association shall be liable to any Owner or their tenants, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of any such guardhouses or access gates.

### **ARTICLE 3.**

#### **ARCHITECTURAL CONTROL**

**3.1 Approval Required.** No devegetation, excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee. No Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee. No addition, alteration, repair, change or other work which in any way alters the appearance of any part of a Lot, or the exterior appearance of any Improvements located thereon, shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement or any other work which requires the prior written approval of the Architectural Committee shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or other work which the Owner desires to perform. The request for approval must be accompanied by plans or specifications showing the nature, kind, color, shape, height, materials and location of the Improvements and such other information as may be required by the Design Guidelines. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within forty-five (45) days after the application, together with any fee payable pursuant to Section 3.5 of this Declaration and all supporting information, plans and specifications requested by the Architectural Committee, have been submitted to the Architectural Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

**3.2 Review of Plans.** The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this Article 3 if the

Architectural Committee determines, in its sole and absolute discretion, that the proposed work violates any provision of this Declaration or the Design Guidelines. In addition, the Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this Article 3 even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that the proposed construction, installation, addition, alteration, repair, change or other work, or some aspect or portion thereof, is unsatisfactory or aesthetically unacceptable. In reviewing the proposed plans and specifications, the Architectural Committee may consider any and all factors which the Architectural Committee, in its sole and absolute discretion, determines to be relevant including, but not limited to: (i) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (ii) the proposed location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; and (iii) the exterior design, finish materials and the color of the proposed Improvements. The Architectural Committee may approve plans and specifications which fail in some material way to comply with the requirements of this Declaration or the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that some particular feature of the Lot or the proposed Improvements allows the objectives of the violated requirements of this Declaration or the Design Guidelines to be substantially achieved. Also, the Architectural Committee may approve plans and specifications which fail to comply with the requirements of this Declaration or the Design Guidelines if the Architectural Committee, in its sole and absolute discretion, determines that the failure is not material. The provisions of this Article to do not apply to, and approval of the Architectural Committee shall not be required for the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements or any other work made by, or on behalf of, the Declarant. The approval required of the Architectural Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation or under any stipulations or conditions imposed by the City in connection with the zoning of the Project or any part thereof.

**3.3 Construction of Improvements.** Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

**3.4 No Changes Without Approval.** Any construction, installation, addition, alteration, repair, change or other work approved by the Architectural Committee must be done or performed in accordance with the plans and specifications approved by the Architectural Committee. No change, deletion or addition to the plans and specifications approved by the Architectural Committee may be made without the prior written approval of the Architectural Committee.

**3.5 Review Fee.** The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change

or other work pursuant to this Article 3, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee. The fee charged by the Architectural Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Architectural Committee in consulting with an architect or engineer with respect to the plans submitted.

**3.6 No Warranty.** The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Article 3 shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

**3.7 Conditional Approval.** The Architectural Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications to furnish to the Association a bond or other security acceptable to the Architectural Committee in an amount determined by the Architectural Committee to be reasonably sufficient to: (i) assure the completion of the proposed Improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (ii) repair any damage which might be caused to any Area of Association Responsibility as a result of such work. Provided there is no damage caused to any Area of Association Responsibility by the Owner or its agents or contractors, any such bond shall be released or security shall be fully refundable to the Owner upon: (i) the completion of the Improvements in accordance with the plans and specifications approved by the Architectural Committee; and (ii) the Owner's written request to the Architectural Committee.

**3.8 Improvements to Areas of Association Responsibility.** If the plans and specifications pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Architectural Committee may condition its approval of the plans and specifications for the proposed construction, installation, addition, alteration, repair, change or other work with respect to the Improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

**3.9 Appointment of Architectural Committee; Promulgation of Design Guidelines.** So long as the Declarant owns any Lot, the number of members of the Architectural Committee shall be determined by the Declarant and the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the number of members on the Architectural Committee shall be determined by the Board, and the Board shall appoint and may remove the members of the Architectural Committee. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Lot, that specified actions of the Architectural Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may

include, without limitation, provisions regarding: (i) the size and height of Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and typography; (iii) placement of Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; and (vii) perimeter and screen wall design and appearance. Subject to an appeal pursuant to Section 3.11 of this Declaration, the decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Design Guidelines may contain general provisions which are applicable to all of the Project as well as provisions which vary from one portion of the Project to another depending upon the location, unique characteristics and intended use thereof. The Design Guidelines shall incorporate and include the design guidelines which are a part of the Development Plan. The Architectural Committee may establish one or more subcommittees consisting of one or more members of the Architectural Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Committee to approve or disapprove the construction, installation or alteration of Improvements within a specified portion of the Project.

**3.10 Appeal to Board.** After the termination of the Declarant's right to appoint and remove the members of the Architectural Committee, any Owner or Occupant aggrieved by a decision of the Architectural Committee may appeal the decision to the Board pursuant to such procedures as may be set forth in the Design Guidelines. The Board may reverse or modify the decision of the Architectural Committee in whole or in part.

**3.11 No Liability.** Neither the Declarant, the Association, the Board nor the Architectural Committee (or any member thereof) shall be liable to the Association or any Owner, Occupant or other Person for any loss or damage suffered or claimed as a result of: (i) the approval or disapproval of any plans, drawings or specifications; (ii) the construction or modification of any Improvement or the performance of any work, whether or not pursuant to approved plans; or (iii) the development of any Lot.

#### **ARTICLE 4. USE RESTRICTIONS**

**4.1 Temporary Occupancy and Temporary Buildings.** No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. No temporary construction buildings or trailers may be installed or kept on any Lot without the prior written approval of the Architectural Committee. Any such temporary buildings or trailers approved by the Architectural Committee shall be removed immediately after the completion of construction.

**4.2 Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of

Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance.

**4.3 Diseases and Insects.** No Person shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

**4.4 Mineral Exploration.** No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

**4.5 Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

**4.6 Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

**4.7 Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet.

**4.12 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements or such machinery or equipment which Declarant or the Association may require for the operation and maintenance of the Project.

**4.13 Signs.** Except for signs required by legal proceedings and signs which are expressly permitted by the Design Guidelines without further approval of the Architectural Committee, no

signs whatsoever (including, but not limited to, commercial, political, "for sale", "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot without the prior written approval of the Architectural Committee. "For sale" or "For Rent" signs shall be not larger than 2 feet by 2 feet in size.

**4.8 New Construction.** All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.

**4.9 Storage Yards.** Lots 17 through 23, inclusive, shall not be permitted to have outside storage yards. All yards on Lots having permitted storage yards, such storage yards must have block perimeter walls. All block walls must be painted or colored, and all block walls facing roadways shall be split-face block.

**4.10 Metal Buildings.** Metal buildings shall be permitted, provided that all metal buildings must have stucco or veneer approved by the Architectural Committee on the side or sides of such building facing a roadway, which stucco or veneer shall be required to wrap around each corner of the building not less than eight (8) feet.

**4.17 Variances.** With the approval of the Board, the Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Occupant or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Occupants of the Project and is consistent with the high standards intended for the Project. No variance granted by the Board and the Architectural Committee pursuant to this Section shall constitute a variance or waiver of any ordinance of the City or of any zoning stipulations or conditions imposed by the City.

**4.18 Drainage.** No structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the City. No Person shall alter the grading of a Lot or alter the natural flow of water over and across a Lot without the prior written approval of the Architectural Committee.

**4.23 Rights of Developers.** Notwithstanding any other provision of this Declaration to the contrary, the Declarant shall have the right to maintain sales offices on Lots owned or leased by the Developer and to construct and maintain parking areas for the purpose of accommodating persons visiting such sales offices. Notwithstanding any other provision of this Declaration to the contrary, the Declarant may store supplies of brick, block, lumber and other building materials on a Lot owned by Developer provided such materials are kept in areas approved in writing by the Architectural Committee which may require the screening of such storage areas. In addition, normal construction activities of the Developer in connection with the construction of Improvements shall not be considered a nuisance or otherwise prohibited by this Declaration. The Declarant constructing

Improvements on Lots shall keep the Lots in a clean, safe and neat condition free of weeds, trash and debris.

**4.11 No Restriction on Further Parcel, Property Restrictions and Rezoning.** Any Lot or Lots may be combined, further subdivided, separated into smaller lots or parcels, or subjected to a condominium declaration by any Owner including the Declarant, provided that no resulting parcel or Lot shall be smaller than 3/4 acre in size. Further covenants, conditions, restrictions, condominium declarations or easements may be recorded by the Owner of such combined, subdivided or separated lots.

## **ARTICLE 5.** **EASEMENTS**

### **5.1 Easement for Use of Common Area.**

(a) Every Owner, Lessee and Occupant shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area (including, but not limited to, the right to use any streets which may be part of the Common Area for ingress and egress to the Owner's Lot) which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(b) The right of the Association to dedicate, convey, transfer, lease or encumber the Common Area as provided in Section 6.11 of this Declaration.

(c) The rights and easements granted to the Declarant in this Declaration, including, without limitation, the rights and easements granted to the Declarant in Sections 5.3 and 5.4 of this Declaration.

(d) The right of certain Owners and Lessees to the exclusive use of Parcel Common Areas.

(e) The right of the Board to charge reasonable admission or other fees for the use of any recreational facility or amenity situated on the Common Area.

(f) The right of the Board to adopt rules, regulations and policies regulating the use of the Common Area, including rules, regulations and policies limiting the number of guests who may use the Common Area and restricting or prohibiting access to such portions of the Common Area (such as landscaped areas) not intended for use by the Owners, Lessees or Occupants.

(g) The right of the Association to suspend the right of an Owner to use the Common Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Community Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation. Any suspension of an Owner's right to use the Common Area shall also extend to the Lessees and Occupants of the Owner's Lot and their guests and invitees.

(h) The right of the Board to permit the use of any recreational facility or amenity situated on the Common Area by Persons other than Owners or Occupants and their guests upon payment of such fees as may be established by the Board.

(i) If a Lot is leased or rented by the Owner thereof, the Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

**5.2 Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company or government agency to erect and maintain the necessary equipment on the Common Area but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area except as initially designed, approved and constructed by the Declarant or as approved by the Board. If the Common Area is damaged, disturbed or destroyed by any Person exercising the easements granted by this Section, such Person shall promptly restore the damaged, disturbed or destroyed Common Area to its prior condition.

**5.3 Declarant's Use for Sales and Leasing Purposes.** Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and model units throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area, any Lot owned or leased by the Declarant or any other Lot with the consent of the Owner thereof. Declarant reserves the right to place management offices, construction offices, visitor's centers and sales and leasing offices and parking for any such offices on any Lots owned by or leased by Declarant, on any portion of the Common Area or any other Lot with the consent of the Owner thereof in such number, of such size and in such locations as Declarant deems appropriate. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

**5.4 Declarant's Easements.** Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and Parcels owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. The Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant by this Declaration. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

**5.5 Easement in Favor of Association.** The Lots and Parcels (except for the interior of a Unit or other buildings) are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors and the Architectural Committee and its members:

- (a) For inspection of the Lots and Parcels in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;
- (c) For correction of emergency conditions in one or more Lots;
- (d) For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Community Documents;
- (e) For inspection of the Lots in order to verify that the provisions of the Community Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of a Lot.

**ARTICLE 6.**  
**THE ASSOCIATION; ORGANIZATION; MEMBERSHIP**  
**AND VOTING RIGHTS**

**6.1 Formation of Association; Powers of the Association.** The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Subject to any limitations set forth in the Community Documents, the Association may exercise all powers granted to nonprofit corporations by the laws of Arizona. The Association shall have the right to contract for garbage collection, cable television services, propane gas or other services for the Owners and Occupants in the Project, or any portion thereof.

**6.2 Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. During the Period of Declarant Control, the directors of the Association shall be appointed and may be removed by the Declarant. Following the termination of the Period of Declarant Control, the directors shall be elected by the Members in accordance with the Articles and Bylaws. Unless the Community Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

**6.3 The Association Rules.** The Board may, from time to time, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for the maintenance of Lots; (iii) the health, safety or welfare of the Owners, Lessees and Occupants, or (iv) restrictions on the use of Lots and Parcels. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

**6.4 Personal Liability.** No director or officer of the Association, no member of the Architectural Committee or of any committee of the Association, and no other person acting on behalf of the Board shall be personally liable to any Member, or to any other Person for damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence in the discharge of such person's duties and responsibilities under the Community Documents provided such person acted in good faith.

**6.5 Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Community Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Community Documents or reasonably necessary to effectuate any such right or privilege.

**6.6 Identity of Members.** Every Owner of a Lot shall be a Member of the Association. Membership in the Association shall be mandatory. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Lot and Parcel and may not be separately assigned, transferred or conveyed.

**6.7 Allocation of Memberships.** Each Member shall have one Membership for each Unit permitted under the Development Plan on each Parcel owned by the Member. If a plat or other instrument creating Lots is Recorded covering all or part of the area within the Parcel, the Parcel shall be reduced in size by the area so platted and the number of Memberships allocated to such Parcel shall be reduced by a number equal to the number of Lots in the Recorded plat. All Memberships attributable to the Parcel shall cease when the land area ceases to be a Parcel because all of the area in the Parcel has been platted or otherwise dedicated to the public and no unplatted area remains within the Parcel.

**6.8 Voting.** The Association shall have the following two classes of voting Memberships:

**Class A.** Class A Memberships shall be all Memberships except for the Class B Memberships held by the Declarant.

**Class B.** Class B Memberships shall be all Memberships held by the Declarant. The Class B Membership shall cease and be converted to Class A Memberships on the earlier of the following:

- (a) The sale of the last Lot or condominium unit owned by the Declarant; or
- (b) When the Declarant gives written notice to the Association that the Declarant wishes to convert its Class B Memberships to Class A Memberships.

During the Period of Declarant Control, only Class B Memberships shall have voting rights.

**6.9 Voting Procedures.** No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote or votes representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast.

**6.10 Transfer of Membership.** The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to the Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

**6.11 Conveyance, Lease or Encumbrance of Common Area.**

(a) Except as provided in Subsection 6.11.2 or 6.11.3 of this Declaration, the Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B member of the Association and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Owners holding Class A memberships in the Association.

(b) With the approval of the City, the Association may dedicate parts of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as the Board may determine to be in the best interests of the Association. The Association may grant permits, licenses and easements on, over, under and through the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Property. The Association may lease all or any part of the Common Area for such purposes and on such terms and conditions as are approved by Members entitled to cast more than fifty percent (50%) of the votes represented in person or by proxy at an annual or special meeting of the Members at which the lease is submitted to the Members for approval.

(c) Declarant reserves the right to make such dedications or conveyances of the Common Area or to grant such easements, rights-of-way or licenses over the Common Area as may be required by the City of Prescott.

**6.12 Suspension of Voting Rights.** If any Owner fails to pay any Assessments or other amounts due to the Association under the Community Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Community Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the

violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Community Documents are corrected.

## **ARTICLE 7.**

### **COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

**7.1 Creation of Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Architectural Committee to take some action or perform some function required of it.

### **7.2 Annual Assessments.**

(a) For each Assessment Period, the Board shall prepare and adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes will be required during the applicable Assessment Period which shall serve as the basis for determining the Annual Assessments for that Assessment Period. The budget shall contain the estimated Common Expenses for the applicable Assessment Period and the estimated income to the Association other than from Assessments and reflect the amount reasonably estimated by the Board to be required in order for the Association to be able to pay all Common Expenses during the Assessment Period. Based upon the applicable budget adopted by the Board, the Board, for each Assessment Period, shall assess against each Lot and Parcel which is Assessable Property an Annual Assessment.

(b) The Board shall give notice of the Annual Assessment to each Owner of a Lot which is Assessable Property at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board fails to adopt a budget for any Assessment Period, then until and unless such budget is adopted and an Annual Assessment is levied by the Board for such Assessment Period, the Annual Assessment for the immediately preceding Assessment Period shall remain in effect. Unless required by law, neither the budget nor the Annual Assessment shall be required to be ratified or approved by the

Members. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, the Board may amend the budget and increase the Annual Assessment for that Assessment Period,

**7.3 Determination of Annual Assessment.** The amount of the Annual Assessment to be levied against each Lot and Parcel which is Assessable Property shall be determined as follows:

(a) For purposes of this Section 7.3, the term "Membership Assessment" shall mean the total amount of any Annual Assessment to be levied against all Lots and Parcels which are Assessable Property divided by the total number of Memberships attributable to the Assessable Property.

(b) Except for Lots and Parcels covered by Subsection (c) or (d) of this Section 7.3 and except for Lots and Parcels owned by the Declarant which are exempt from Assessment under Subsection (e) of this Section 7.3, each Lot and Parcel shall be assessed an Annual Assessment in an amount equal to the number of Memberships attributable to such Lot pursuant to Section 6.7 of this Declaration multiplied by the Membership Assessment.

(c) A Lot shall be assessed 25% of the amount equal to the number of Memberships attributable to the Lot multiplied by the Membership Assessment until the earlier of (i) the completion of a Unit on the Lot, (ii) six months from the commencement of construction of a Unit on the Lot, or (iii) two (2) years from the date the Lot is conveyed by the Declarant to an Owner other than the Declarant.

(d) A Parcel shall be assessed 25% of the amount equal to the number of Memberships attributable to the Parcel multiplied by the Membership Assessment until two (2) years from the date the Parcel is conveyed by the Declarant to a Purchaser.

(e) During the Period of Declarant Control, no Annual Assessment shall be levied against Lots and Parcels owned by the Declarant, but the Declarant shall be required to pay to the Association the difference between the cost of operating and administering the Association (except for costs and expenses which are assessed as a Parcel Assessment pursuant to Section 7.5 of this Declaration) and the Annual Assessment levied pursuant to this Section 7.3. After the expiration of the Period of Declarant Control, Declarant shall no longer be required to subsidize the cost of operating and administering the Association but all Lots and Parcels owned by Declarant shall be subject to an Annual Assessment in the same manner as any other Lot. Notwithstanding any other provision of this Subsection (e) to the contrary, the Declarant shall not be obligated to pay any Common Expense which becomes due after the expiration of the Period of Declarant Control and the total amount payable by the Declarant pursuant to this Subsection (e) shall not exceed the total amount of the Annual Assessments which would have been levied against Lots and Parcels owned by the Declarant during the Period of Declarant Control.

**7.4 Special Assessments.** The Association may levy against each Lot which is Assessable Property a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon an Area of

Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment is approved by Members having more than two-thirds (2/3) of the votes in each Class of Membership entitled to be cast by Members present in person or by proxy at a meeting duly called for such purpose. Special Assessments shall be levied at a uniform rate per Membership. So long as the Declarant owns any Lot, any Special Assessment must be approved in writing by the Declarant.

#### **7.5 Parcel Assessments.**

(a) All Common Expenses of the Association pertaining to the maintenance, repair and replacement of Parcel Common Areas or to the providing of Parcel Services shall be shown separately in the budget adopted by the Board. The Common Expenses pertaining to the maintenance, repair and replacement of a Parcel Assessment Area or to the providing of Parcel Services shall be assessed solely against the Lots and Parcels within the Parcel Assessment Area as established by the Supplemental Declaration designating the Parcel Assessment Area. No Common Expenses pertaining to the maintenance, repair or replacement of Parcel Common Area or pertaining to providing Parcel Services shall be used in computing the Annual Assessments to be levied pursuant to Section 7.2 of this Declaration. Unless otherwise provided for in the applicable Supplemental Declaration, Parcel Assessments shall be levied against the Lots and Parcels within the Parcel Assessment Area at a uniform rate per Membership. If the Board determines during any Assessment Period that any Parcel Assessment is, or will, become inadequate to pay all Common Expenses to be paid by the Parcel Assessment for any reason, including, without limitation, nonpayment of Parcel Assessments by Owners, the Board may increase the Parcel Assessment for that Assessment Period and the revised Parcel Assessment shall commence on the date designated by the Board.

(b) In addition to a Parcel Assessment assessed pursuant to Subsection 7.5(a), the Association may assess against each Lot and Parcel within a Parcel Assessment Area a special Parcel Assessment for the purpose of paying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement situated on the Parcel Common Area. Any such special Parcel Assessment shall be assessed against all Lots and Parcels within the applicable Parcel Assessment Area at a uniform rate per Membership.

**7.6 Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

**7.7 Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty

(30) days written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**7.8 Effect of Nonpayment of Assessments; Remedies of the Association.**

(a) Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

(b) The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all monetary penalties levied against the Owner of the Lot; (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot; (v) any amounts payable to the Association pursuant to Section 8.3 or 8.4 of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Community Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments and all other amounts due to the Association by such Owner. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount to be set from time to time by the Board.

(c) The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any First Mortgage. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

(d) The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, monetary penalties, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

(e) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots and Parcels purchased at such sale.

**7.9 Evidence of Payment of Assessments.** Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating that all Assessments, interest, and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

**7.10 Purposes for which Association's Funds May Be Used.** The Association shall use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) solely for the purpose of (i) discharging and performing the Association's duties and obligations under the Community Documents; (ii) exercising the rights and powers granted to the Association by the Community Documents, and (iii) the common good and benefit of the Project and the Owners, Lessees and Occupants by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners, Lessees and Occupants.

**7.11 Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

**7.12 Reserves.** The Assessments shall include a reasonable amount allocated as reserves for the future periodic maintenance, repair or replacement of Improvements situated on the Common Areas. All amounts allocated as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account and shall be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The amount included in the Assessments as being allocated to reserves shall be determined by the Board in the exercise of its business judgment. Amounts allocated to reserves shall be used only for the maintenance, repair or replacement of Improvements situated on the Common Area unless a different use of such funds is approved by the affirmative vote of Members entitled to cast more than fifty percent (50%) of the total votes in the Association.

## **ARTICLE 8. MAINTENANCE**

**8.1 Areas of Association Responsibility.** The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility, but all Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Occupant or other Person shall construct or install any Improvements on the Common Area or alter, modify or remove any Improvements situated on the Common Area without the approval of the Board. No Owner, Occupant or other person shall remove, add to or modify any plants, trees, granite or other landscaping Improvements in the part of their Lot which constitutes an Area of Association Responsibility without the prior written approval of the Board. No Owner, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Areas of Association Responsibility, and the Improvements located thereon.

**8.2 Lots and Parcels.** Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his Lot, and all buildings, Units, landscaping or other Improvements situated thereon, except for any portion of the Lot which is an Area of Association Responsibility. All buildings, Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots and Parcels upon which no Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

**8.3 Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility, or any Improvement

situated thereon, is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

**8.4 Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of his obligations under the Community Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

**8.5 Boundary Walls.**

(a) Each wall or fence which is located between two Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section 8.5, the general rules of law regarding boundary walls shall apply.

(b) The Owners of contiguous Lots who have a boundary wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner;

(c) The adjoining Owners shall each have the right to perform any necessary maintenance, repair or replacement of the wall and the cost of such maintenance, repair or replacement shall be shared equally by the adjoining Owners except as otherwise provided in this Section; provided, however, that each Owner shall be solely responsible for painting the side of the wall which faces his Lot.

(d) In the event that any boundary wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners;

(e) In the event any such boundary wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

(f) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title;

(g) In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to build, modify, make additions to or rebuild a boundary wall shall first obtain the approval of the Architectural Committee;

(h) In the event any boundary wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots which share such boundary wall.

(i) The provisions of this Section shall not apply to walls between Condominium Units.

#### **8.6 Maintenance of Walls other than Boundary Walls.**

(a) Unless otherwise provided in a Supplemental Declaration, walls (other than boundary walls governed by Section 8.5 or walls covered by Subsections 8.6.2 and 8.6.3 of this Declaration) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot.

(b) Any wall which consists of masonry columns and/or masonry base and wrought iron fencing which separates a Lot and an Area of Association Responsibility shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the painting, repair, maintenance and replacement of (i) the top of the masonry wall or columns, (ii) the side(s) of the masonry wall or columns which are visible from the Area of Association Responsibility, and (iii) all portions of any wrought iron fencing. The Owner of the Lot shall be responsible for reimbursing the Association for one-half ( $\frac{1}{2}$ ) of the cost incurred by the Association in painting, repairing and/or replacing any such wrought iron fencing. Any reimbursement due to the Association from an Owner pursuant to this Subsection shall be paid by the Owner to the Association within fifteen (15) days after receipt of a bill, invoice or other demand from the Association for such reimbursement amount.

(c) If the Association deems it necessary to trim, cut or remove vines, plants, trees, bushes, shrubs or other landscaping planted on a Lot in order for the Association to be able to perform its maintenance responsibilities under this Section, the Association shall give notice to the Owner of the applicable Lot identifying the work which must be done in order for the Association to be able to perform its maintenance responsibilities and the date by which such work must be completed. If the Owner does not perform the work identified in the notice within the time period set forth in the notice, then the Association shall have the right to perform the necessary work and charge the Owner for all costs incurred by the Association in the performance of the work. Any such amounts which become payable by an Owner to the Association pursuant to this Subsection shall be paid by the Owner within fifteen (15) days after receipt of a billing, invoice or other demand from the Association for payment of such amount. The Association shall not be liable to the Owner of a Lot or to any other Person for any loss or damage to the landscaping or for any change in appearance of a Lot as a result of any work performed by the Association on a Lot pursuant to this Subsection. The Association shall be liable to the Owner of a Lot for any damage to a wall caused by the Association in the exercise of the Association's rights under this Subsection 8.6.

(d) Any wall which is placed on the boundary line between a Lot and public right-of-way shall be maintained, repaired and replaced by the Association except that the Owner of the Lot shall be responsible for the repair and replacement of the surface of the wall which faces the Lot.

## **ARTICLE 9. INSURANCE**

**9.1 Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(a) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

(b) Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

(c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

(d) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

(e) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

**9.2 Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

**9.3 Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Section 9.1 of this Declaration shall be a Common Expense and included in the budget of the Association and shall be paid by the Association.

**9.4 Payment of Insurance Proceeds.** With respect to any loss to any Area of Common Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 9.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

**9.5 Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly if repair or replacement of the property is required by the City. If repair or replacement of the property is not required by the City, the damaged or destroyed property shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

## **ARTICLE 10.**

### **GENERAL PROVISIONS**

**10.1 Enforcement.** The Association or any Owner shall have the right to enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Community Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Community Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the

Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action. In addition to any other rights or remedies available to the Association pursuant to the Community Documents or at law or in equity, the Board shall have the power to levy reasonable monetary penalties against an Owner for a violation of the Community Documents by the Owner, a Lessee of the Owner or, in the case of a Lot, by any Occupant of the Owner's Lot, provided the Owner is given notice and an opportunity to be heard.

**10.2 Duration; Method of Termination.** The covenants, conditions, restrictions, easements and other provisions of this Declaration, as amended from time to time as provided in Section 10.3 of this Declaration, shall run with the land and bind the Property and be in full force and effect in perpetuity unless this Declaration is terminated as provided in this Section. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Upon the Recording of a Certificate of Termination, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

**10.3 Amendments.**

(a) Except for amendments made pursuant to Subsection 10.3(b) or 10.3.5 of this Declaration, the Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners representing not less than seventy-five percent (75%) of the total votes in the Association.

(b) The Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, may amend this Declaration, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration to the requirements or guidelines of the City or any federal, state or local governmental agency whose approval of the Project or the Community Documents is required by law or requested by the Declarant or the Board.

(c) So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant.

(d) The Declarant, so long as the Declarant is a Member of the Association, and thereafter, the Board, may amend this Declaration without the consent of any other Owner to correct any error or inconsistency in the Declaration.

(e) Without the approval of the City, this Declaration may not be amended in any manner which would violate any stipulation or condition imposed by the City in connection with the zoning of the Project or any part thereof.

(f) So long as the Declarant holds more than seventy-five percent (75%) of the votes in the Association, any amendment to this Declaration shall be signed by Declarant and Recorded. At any time the Declarant does not hold at least seventy-five percent (75%) of the votes in the Association, any amendment approved pursuant to Subsection 10.3.1 of this Declaration or by the Board pursuant to Subsection 10.3(b) or 10.3(d) of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 10.3.2 or 10.3.5 of this Declaration shall be signed by the Declarant and Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

**10.4 Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or Design Guidelines, the Bylaws shall control.

**10.5 Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

**10.6 Rule Against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of twenty-one (21) years after the death of the last survivor of the now living descendants of George W. Bush, President of the United States.

**10.7 Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

**10.8 Notice of Violation.** The Association shall have the right to record against a Lot a written notice of a violation with respect to any violation of the Community Documents by the Owner, Lessee or Occupant of the Lot. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee or Occupant violating, or responsible for the violation of, the Community Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner, Lessee or Occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner, Lessee and Occupant, and any subsequent purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute a waiver of

any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Community Documents.

**10.9 Laws, Ordinances and Regulations.**

(a) The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

(b) Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

**10.10 References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot, Parcel or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

**10.11 Gender and Number.** Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

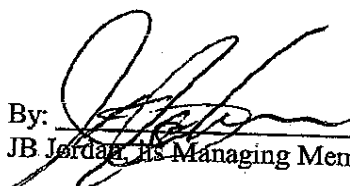
**10.12 Captions and Titles.** All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

**10.13 No Absolute Liability.** No provision of the Community Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area. Owners shall only be responsible for damage to the Common Area caused by the Owners' negligence or intentional acts.

**10.14 Declarant's Disclaimer of Representations.** Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can and will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, of that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any

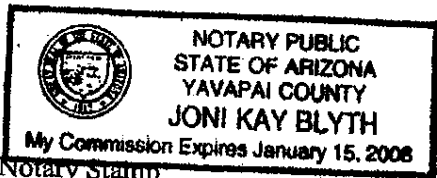
reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold Declarant harmless therefrom.

INVESTMENT POTENTIAL, LLC, an Arizona  
limited liability company

By:   
JB Jordan, its Managing Member

State of Arizona                    )  
                                          ) ss.  
County of Yavapai                )

The foregoing instrument was acknowledged before me this 10 day of July 2006, by JB Jordan, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Managing Member of Potential Investments, LLC, an Arizona limited liability company, on behalf of the limited liability company.



Notary Stamp

  
Notary Public

**Exhibit A**

A parcel of land located in the East half of Section 25, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

**BEGINNING** at the Northeast corner of said Section 25;

Thence South 00°04'12" West along the Easterly line of said Section 25, a distance of 478.62 feet, more or less, to a 3" diameter aluminum cap being the **TRUE POINT OF BEGINNING** of this description;

Thence continuing South 00°04'12" West, a distance of 4,755.53 feet to a ½ inch rebar with no I.D.;

Thence North 89°41'01" West, a distance of 191.83 feet to a point;

Thence North 54°49'13" West, a distance of 751.72 feet to a ½ inch rebar with no I.D. on the easterly right of way of Wilkinson Drive, said right of way dedicated in Book 12 of Maps and Plats, page 37, Yavapai County Recorder's Office;

Thence North 43°26'10" West along said easterly right of way, a distance of 789.89 feet to a ½ inch rebar with tag L.S. 15904;

Thence North 32°13'22" West along said Easterly right of way, a distance of 372.29 feet to a ½ inch rebar with tag L. S. 15904;

Thence leaving said right of way North 41°14'14" East, a distance of 895.81 feet to a ½ inch rebar with tag L.S. 15904;

Thence North 48°45'44" West, a distance of 508.42 feet to a ½ inch rebar with tag L.S. 15904;

Thence South 41°14'02" West, a distance of 871.10 feet to a ½ inch rebar with tag L.S. 15904 falling on the afore-mentioned Easterly right of way;

Thence North 56°00'38" West, along said Easterly right of way, a distance of 234.54 feet to a ½ inch rebar with tag L.S. 15904;

Thence North 43°30'10" West along said Easterly right of way, a distance of 305.87 feet to a found ½ inch rebar with no I.D.;

Thence leaving said Easterly right of way North 41°13'35" East, a distance of 49.98 feet to a ½ inch rebar with tag L.S. 15904;

Thence North 43°26'22" West, a distance of 49.98 feet to a ½ inch rebar with tag L.S. 15904 being a point on the Southerly right of way of Melville Road;

Thence North 41°15'00" East along said Southerly right of way, a distance of 3527.88 feet to the **TRUE POINT OF BEGINNING** and the end of this description.